on a positive act of the municipal authorities, as in the instant case, courts will hold that the city is estopped. *People v. Union Gas Co.* (1913) 260 Ill. 392, 103 N. E. 245; *Hagerstown v. Hagerstown Ry., supra.* Although this decision is supported by much authority, it would seem that the better rule is laid down in *Holland Realty and Power Co. v. St. Louis, supra,* since the granting of such a privilege should be closely supervised.

PRACTICE—DIRECTED VERDICTS IN CRIMINAL CASES—JUDGE AND JURY—INSTRUCTIONS AS TO LAW IN EFFECT DIRECTING A VERDICT.—The defendant and his assistant admitted moving his loan office into Virginia, maintaining a reception office in the District of Columbia, and conducting as many as 200 patrons a day across the line by automobile, in order to evade the statute regulating the business in the District. The judge instructed the jury that this admitted course of dealing constituted a violation of the law; that to find for the defendant would be contrary to the law and the evidence and a violation of their oath; that by law he had no power to direct a verdict in a criminal case, but that what he said amounted to that. *Held,* (four justices *dissenting*) that whatever wrong the defendant may have suffered was purely formal, as from the admitted facts there was no doubt of his guilt, and the judge always has the privilege of telling the jury what the law is upon a certain state of facts, even where the facts are agreed. *Horning v. District of Columbia* (1920, U. S.) 41 Sup. Ct. 53.

It is an elementary proposition of law that the court cannot direct a verdict of guilty in a criminal action. *Breese v. United States* (1901, C. C. A. 4th) 108 Fed. 804. But it is the prevailing doctrine that the jury are bound, even in criminal trials, to follow and apply the law as laid down by the court. *Duffy v. The People* (1863) 26 N. Y. 588; *Sparf and Hansen v. United States* (1895) 156 U. S. 51, 64, 15 Sup. Ct. 273; 2 Thompson, *Trials* (2d ed. 1912) sec. 2133. On the other hand, the jury can, if they see fit, contrary to their moral duty and the obligations of their oath, disregard the evidence before them, and the law as expounded to them by the court, and return a verdict of not guilty. See 84 J. P. 506; Thompson, *op. cit.* See also COMMENT (1921) 19 MICH. L. REV. 325. In the principal case, where the facts showing the defendant's guilt were undisputed, these two principles of law came into direct conflict. The modern tendency is toward holding that an instruction correctly stating the law and warning the jury against a finding contrary to it, is not a direction of a verdict of guilty, though it in effect does direct the jury to find the defendant guilty. *Nicholson v. Commonwealth* (1879) 91 Pa. 390; *State v. Lackawanna Ry.* (1912) 82 N. J. L. 747, 82 Atl. 851. It is submitted that it is proper for the court to warn the jury against exercising their power of disregarding the law and the evidence in violation of their moral duty, and that no substantive rights of the defendant are violated, as it is not to be presumed that a jury will find in opposition to the law from mere whim, caprice, or prejudice, for all their power to do so. *People v. Neumann* (1891) 85 Mich. 98, 48 N. W. 290.

PRACTICE—INDICTMENT—JURY—PRESENCE OF UNAUTHORIZED PERSONS IN GRAND JURY ROOM AS GROUND FOR QUASHING INDICTMENT.—The defendants, having been indicted for unlawfully appropriating funds of a company of which they were members, moved to quash the indictment on two grounds: (1) it was found on hearsay evidence given by a committee of a previous grand jury; (2) the present grand jury was influenced by this committee, which came as a delegation to urge action on the part of the jury. *Held,* that the indictment should be quashed, on the second ground only. *State v. Ernster* (1920, Minn.) 179 N. W. 640.

The investigations of the grand jury are clothed in the utmost secrecy and indeed some courts have held that, in order that this secrecy may be complete,

they will not inquire into the amount or kind of evidence which produced the indictment. *State v. Fasset* (1844) 16 Conn. 457, 471; *State v. Comer* (1902) 157 Ind. 611, 62 N. E. 452. But since the innovation of rules limiting the grand jury in their reception of evidence, it has logically followed that the proceedings may be inquired into with reference to the sufficiency or legality of the evidence. *United States v. Farrington* (1881, N. D. N. Y.) 5 Fed. 343; see 4 Wigmore, *Evidence* (1905) sec. 2364. If the court should find that there was some competent evidence, the mere fact that incompetent evidence was admitted will not be sufficient ground to quash, as a valid indictment may have been found on the competent evidence. *People v. Rice* (1919) 206 Mich. 644, 173 N. W. 495; see 12 R. C. L. 1040. Where, however, the evidence is utterly insufficient, the indictment will be quashed. *United States v. Silverthorne* (1920, W. D. N. Y.) 265 Fed. 853; see 2 Wharton, *Criminal Procedure* (10th ed. 1918) sec. 1291. In the instant case it does not appear that the indictment was founded solely on the hearsay evidence, and so the court correctly decided that the indictment should not be quashed on the first ground. See 47 L. R. A. (N. S.) 1207, note. The argument dealing with the incompetency of witnesses before a grand jury as ground for quashal has resulted in a diversity of authority. See (1916) 16 COL. L. REV. 158; (1915) 28 HARV. L. REV. 326. It has been held that where a witness was not sworn, the indictment should be quashed even if the jurors were not actually influenced. *State v. Wetzel* (1914) 75 W. Va. 7, 83 S. E. 68. And again the court held it to be sufficient ground to quash that a private attorney was present, even if at the request of the county attorney. *Hartgraves v. State* (1911) 5 Okla. Cr. App. 266, 114 Pac. 343. But the logical rule would seem to be the one that is generally followed where there is incompetent evidence, viz., if there were some competent witnesses present, that is sufficient to sustain the indictment, even though incompetent witnesses were also present. *State v. Shreve* (1897) 137 Mo. 1, 38 S. W. 548. In the instant case, not only were incompetent witnesses present, but also an attempt was made by them as a delegation to influence the finding of the grand jury. Here also there is a diversity of opinion, as it has been held that where a witness did not have any actual knowledge of the case but merely came to urge the finding of an indictment, his conduct fell far short of being ground for quashal. *State v. Bacon* (1900) 77 Miss. 366, 27 So. 563. The line must be drawn somewhere, however, and it surely seems unjust to the accused to have witnesses come as a body to urge the finding of an indictment when the facts themselves may warrant such action. Considering also that the chief function of the grand jury is the impartial investigation of all the facts in a particular case, outside influence, especially where it is intended to affect the finding, should be entirely excluded. The instant case, therefore, is apparently sound. See 14 R. C. L. 205. An additional reason for this conclusion is found in the provisions of Minn. Gen. St. 1913, sec. 9180.

PROPERTY—TENANCY IN COMMON—DEED OF ENTIRE ESTATE IN SEVERALTY BY ONE CO-TENANT TO A STRANGER—ADVERSE POSSESSION UNDER SUCH A DEED.—The plaintiffs' and the defendant's grantors respectively owned land as tenants in common. The plaintiffs' grantor executed to them a deed purporting to convey the entire interest in severalty in a specific parcel thereof. The defendant claims under a deed of the other co-tenant's interest. For a longer time than the statutory period the plaintiffs grazed their cattle on the land during the grazing season; but did not prevent the defendant or his grantor from grazing their cattle. Little use was made of the land during the remainder of the year. The plaintiffs brought an action to quiet their title to the parcel in question, claiming title thereto in severalty by adverse possession. *Held*, that the plaintiffs were entitled to the relief sought, since entry under their deed is presumed to have been adverse